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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re

Case No. 09-12615

TOG-4

Jose Azevedo and
Laudelina Azevedo

Debtors.

OPINION

1 A debtor seeking contempt for a discharge violation must prove
2 that the creditor knew the discharge was applicable. Jose Azevedo
3 owed Central Valley Dairymen, Inc. ("CVD") money, filed bankruptcy
4 under an alias but failed to give CVD notice. Unaware of the
5 bankruptcy, CVD garnished Azevedo's wages. Azevedo protested, but
6 refused to confirm his identity and at trial did not prove that the
7 discharge applied to CVD's claim. Should CVD be held in contempt?

8 **FACTS**

9 Jose Azevedo ("Azevedo") emigrated from the Azores to the United
10 States at a young age. He speaks only Portugese and has a fourth-
11 grade education.

12 From 1992 to 2008, together with Frank Silva, Azevedo did
13 business under the name Azevedo & Silva Dairy. From 1992 to 2003,
14 both Azevedo and Azevedo & Silva Dairy were members of Central Valley
15 Dairymen, Inc. ("CVD"), a non-profit agricultural cooperative
16 association, which dealt in milk and milk products. CVD knew Azevedo
17 by the name "Joe Azevedo" or by his trade name, Azevedo & Silva Dairy.

18 Azevedo and others members of CVD brought suit in Merced County,
19 California, against CVD and others (the "Merced County action"). See
20 *Nunes v. Central Valley Dairymen, Inc.*, No. 147653 (Cal. Super. Ct.
21 2008). Azevedo's claim against CVD was for breach of contract, and
22 CVD's cross-complaint against Azevedo was also for breach of contract.

23 After trial in 2008, a jury returned a verdict of \$94,610.09 for
24 Azevedo and against CVD and a verdict of \$26,748.94 for CVD and
25 against Azevedo. Other verdicts were rendered as well. The parties
26 appealed.

27 In 2009, Azevedo and his wife, Laudelina Azevedo (together, the
28

1 "Azevedos"), filed a joint Chapter 7¹ bankruptcy case with
2 representation by attorney Scott Mitchell. The petition did not
3 include either the name "Azevedo & Silva Dairy" or the name "Joe
4 Azevedo" as aliases used by Azevedo in the 8 years before the
5 petition. The petition did describe the Azevedos' address as 15753
6 California Highway 140, Livingston, California, an address CVD
7 associated with Azevedo's alias, Joe Azevedo.

8 The Azevedos' Statement of Financial Affairs indicated that
9 Azevedo was self-employed as Azevedo & Silva Dairy. Their schedules
10 did not, however, include the judgment entered in the Merced County
11 action, which had been appealed, or Azevedo's ownership interest in
12 Azevedo & Silva Dairy.

13 CVD was not included in the list of creditors and received no
14 notice of Azevedo's bankruptcy petition. It was otherwise unaware of
15 Azevedo's bankruptcy at the time of Azevedo's bankruptcy filing.

16 After concluding the meeting of creditors, the Chapter 7 trustee
17 issued a Report of No Distribution. In due course, the Azevedos
18 received their discharge, and their case was closed.

19 Azevedo, CVD, and others continued to pursue their appeals of the
20 judgment entered in the Merced County action. In 2010, a state
21 appellate court reversed the portion of the judgment that awarded
22 Azevedo damages against CVD and affirmed the portion of the judgment
23 that awarded CVD damages of \$26,748.94 against Azevedo. CVD's
24 judgment has since grown to approximately \$36,683.60. Other portions
25 of the judgment inapplicable here were also affirmed and reversed.

26
27 ¹ Unless otherwise indicated, all chapter, section, and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 In December 2012, unaware of the bankruptcy and seeking to
2 collect its judgment against Azevedo, CVD's attorney Peter Dean
3 ("Dean") garnished Azevedo's wages earned from Gallo Cattle Company,
4 where Azevedo had accepted employment after Azevedo & Silva Dairy had
5 ceased operations. In response to CVD's wage garnishment, Azevedo
6 hired the Law Offices of Thomas O. Gillis ("GLO") to represent him.

7 On January 28, 2013, GLO's attorney Katharyne Taylor ("Taylor")
8 contacted Dean, explaining that GLO represented Azevedo and that he
9 had filed bankruptcy. Dean asked for a copy of the bankruptcy
10 petition.

11 Following up on this phone call to Dean, GLO sent Dean a letter,
12 which Dean received February 22, 2013. The letter recited GLO's
13 representation of Mr. and Mrs. Jose Azevedo, and provided Azevedo's
14 case number. GLO asserted that CVD appeared on the Azevedos' Schedule
15 F. The letter also indicated that Azevedo had received his discharge
16 and that such discharge precluded further levy on Azevedo's wages. It
17 further stated that CVD had been given timely notice of Azevedo's
18 bankruptcy. The letter demanded the withdrawal of the wage
19 withholding order. But it made no reference to the debtor's aliases.

20 On February 26, 2013, a heated phone call occurred between Taylor
21 and Dean in which Taylor demanded that CVD stop garnishments against
22 Azevedo's wages and told Dean of Azevedo's bankruptcy. During this
23 phone call, there was no discussion of Azevedo's aliases. Although
24 Taylor described businesses in Azevedo's schedules that were similar
25 to CVD, Dean disputed that CVD's claim had been scheduled. Dean
26 inquired as to how the judgment debt owed to CVD had been discharged.
27 Taylor informed Dean that he must not know much about bankruptcy or
28 about the law.

1 On March 21, 2013, the Azevedos filed a motion to reopen their
2 case and a motion for contempt against CVD and Dean, citing CVD's
3 failure to release the garnishment once CVD had been notified of
4 Azevedo's discharge. The motion for contempt created a conflict of
5 interest between CVD and Dean, so CVD hired attorney Thomas F. Camp
6 ("Camp") to represent it in the contempt proceeding.

7 On April 16, 2013, Camp contacted GLO in writing regarding the
8 facts of the contempt proceeding. Camp raised the question of whether
9 Azevedo, the person represented by GLO and whose debts had been
10 discharged in bankruptcy, was the same person as Joe Azevedo, CVD's
11 judgment debtor. Camp noted that Dean had not been provided proof
12 that Azevedo and Joe Azevedo were the same person.

13 On April 18, 2013, Camp and attorney Thomas Gillis ("Gillis") of
14 GLO also had a contentious conversation about the garnishment. Gillis
15 was angry that CVD continued to raise the identity issue and told
16 Camp, "I am not giving you shit."

17 On May 30, 2013, the court held a scheduling conference on
18 Azevedos' motion for contempt. After the hearing, the parties met and
19 for the first time Azevedo provided CVD a copy of his California driver
20 license and Social Security card. Using that information, Dean
21 conducted an investigation and determined that Azevedo and Joe Azevedo
22 were likely to be the same person. As a result, on June 15, 2013, CVD
23 released its wage withholding order and returned \$3,745.30 to GLO that
24 CVD had collected by garnishment.

25 The court held an evidentiary hearing on Azevedo's contempt
26 motion. No party has requested an adjudication of the
27 dischargeability of Azevedo's debt to CVD pursuant to Federal Rule of
28 Bankruptcy Procedure 4007.

JURISDICTION

This court has jurisdiction. See 28 U.S.C. § 1334; 11 U.S.C. § 105; General Order No. 182 of the U.S. District Court for the Eastern District of California. This is a core proceeding. See 28 U.S.C. § 157(b)(2)(A).

DISCUSSION**I. Civil Contempt Standards for Remedying Discharge Violations**

Section 524(a) prescribes the effect of a Chapter 7 discharge. A Chapter 7 discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor, whether or not discharge of such debt is waived." 11 U.S.C. § 524(a)(2).

A creditor who knowingly violates the discharge injunction may be held to answer for civil contempt. See *id.* § 105(a); *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). The party requesting contempt sanctions carries the burden of proof, which requires "showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *Renwick*, 298 F.3d at 1069 (quoting *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999)). Such a specific and definite order "includ[es] 'automatic' orders, such as the automatic stay or discharge injunction." *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1196 (9th Cir. 2003); see also *Flores v. Oh (In re Oh)*, 362 F. App'x 576, 577 (9th Cir. 2009) (rejecting argument that discharge order was "vague and indefinite" and reasoning that the "terms of the discharge injunction were unambiguous and fixed by statute"). "[T]o justify

1 sanctions, the movant must prove that the creditor (1) knew the
2 discharge injunction was applicable and (2) intended the actions which
3 violated the injunction." *Renwick*, 298 F.3d at 1069 (citing *Hardy v.*
4 *United States (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir. 1996)).

5 The remedy of contempt lies in the discretion of the court that
6 issued the discharge order. See *id.*; *Cox v. Zale Del., Inc.*, 239 F.3d
7 910, 915-16 (7th Cir. 2001) ("The remedy authorized by section
8 524(a)(2) has the advantage of placing responsibility for enforcing
9 the discharge order in the court that issued it."). The court has
10 this discretion because it has the power to enforce its own orders.
11 See 11 U.S.C. § 105(a). The debtor has no independent right to
12 enforce the discharge order. *Walls*, 276 F.3d at 504.

13 II. Application of the Discharge to the Judgment Debt

14 To justify contempt sanctions as a remedy for a creditor's
15 violation of the discharge order, the standard first requires the
16 debtor to show by clear and convincing evidence that the creditor
17 violated the discharge order. See *Renwick*, 298 F.3d at 1069. But the
18 creditor does not violate the discharge order unless the order applies
19 to the creditor's claim. In a Chapter 7 context, this means that
20 (1) the creditor took an action "to collect, recover or offset" a
21 particular debt "as a personal liability of the debtor," 11 U.S.C.
22 § 524(a)(2), and (2) such debt is a "debt discharged under
23 section 727," *id.* § 524(a)(1). A debt is discharged if it "arose
24 before the date of the order for relief" and has not been excepted
25 from discharge "as provided in section 523 of this title." *Id.*
26 § 727(b).

27 The analysis of whether the discharge order applies to a
28 creditor's claim raises difficult questions regarding the precise

1 contours of the debtor's prima facie case in showing a discharge
2 violation. Two alternative standards are possible. Making the prima
3 facie case may require proof only that a discharge order has been
4 issued for the relevant debtor and that the creditor took an act to
5 collect, recover or offset a debt. By inference, such a standard
6 would shift to the creditor the burden of proof on the issue of the
7 applicability of the discharge order to the creditor's claim.

8 Alternatively, making the prima facie case for a violation may
9 require the debtor to prove, in addition to the other elements, that
10 the discharge applies to the debt on which the alleged discharge
11 violation is premised. See, e.g., *Ellis v. Dunn (In re Dunn)*, 324
12 B.R. 175, 180-81 (D. Mass. 2005). Defining this aspect of the
13 debtor's prima facie case becomes particularly critical in cases in
14 which such debt was unscheduled and the creditor had no notice or
15 actual knowledge of the case in time to file a timely
16 nondischargeability action, a circumstance that could bring the debt
17 within the ambit of § 523(a)(3)(B) if the debt is of a kind described
18 in subsections (2), (4), or (6) of § 523. In such cases, the task of
19 determining who must prove the applicability of the discharge to the
20 creditor's claim is complicated by the conflicting burdens of proof in
21 nondischargeability actions under subsections (2), (4), and (6) of
22 § 523, see *Grogan v. Garner*, 498 U.S. 279, 289 (1991), and contempt
23 proceedings for discharge violations, see *Renwick*, 298 F.3d at 1069.

24 This court holds a debtor's prima facie case includes an initial
25 showing, in addition to the other elements discussed, that the scope
26 of the discharge extends to the debt that the creditor had taken an
27 action to collect. In the case of an unscheduled creditor in a no-
28 asset, no-bar-date Chapter 7, applying this standard results in

1 placing the burden on the debtor to show that none of the exceptions
2 to discharge under § 523(a)(2), (4), and (6) apply to the debt by
3 operation of § 523(a)(3)(B).

4 Three rationales support the conclusion about what the debtor's
5 prima facie case entails. First, defining the prima facie case this
6 way adheres to Ninth Circuit precedent that requires the party
7 requesting contempt sanctions to carry the burden of showing a
8 violation of the court's order. *Renwick*, 298 F.3d at 1069.

9 The standard for finding a party in civil contempt is
10 well settled: The moving party has the burden of
11 showing by clear and convincing evidence that the
12 contemnors violated a specific and definite order of
the court. The burden then shifts to the contemnors
to demonstrate why they were unable to comply.

13 *Id.* (quoting *Affordable Media*, 179 F.3d at 1239). Showing a violation
14 of a discharge order by definition requires showing specifically that
15 the order applies to the debt on which the violation is premised. See
16 11 U.S.C. § 524(a)(1)-(2) (prohibiting acts to collect only debts that
17 are discharged). Therefore, as part of the initial burden of showing
18 the violation of the discharge order, the debtor as the party
19 requesting contempt sanctions must show the applicability of the
20 discharge order to the debt that the creditor had taken an action to
21 collect. Limiting the debtor's prima facie case to showing only that
22 the discharge order has been issued without requiring proof that the
23 discharge applied to the creditor's claim inappropriately shifts the
24 burden of proof to the creditor, the target of the contempt sanction.
25 *Dunn*, 324 B.R. at 180.

26 Second, requiring such a showing as an element of the debtor's
27 prima facie case is consistent with other courts' resolution of the
28 issue. See *Dunn*, 324 B.R. at 180; *In re Lang*, 398 B.R. 1, 3-4 (Bankr.

1 N.D. Iowa 2008) ("The moving party must also demonstrate that the
2 creditor's conduct relates to a debt that is encompassed by the
3 discharge order."); *Gakinya v. Columbia Coll. (In re Gakinya)*, 364
4 B.R. 366, 370 (Bankr. W.D. Mo. 2007). But see *In re Hicks*, 184 B.R.
5 954, 959 (Bankr. C.D. Cal. 1995). Only after the debtor has made this
6 initial showing on applicability of the discharge to the creditor's
7 claim does the burden on this issue shift to the creditor.

8 Third, in contempt proceedings involving unscheduled debts within
9 the scope of § 523(a)(3)(B) in no-asset, no-bar-date Chapter 7 cases,
10 policy considerations favor placing on the debtor the obligation of
11 going forward with the evidence on the issue of applicability of the
12 discharge order to the creditor's claim. The debtor in such cases is
13 the party best positioned to avoid the problem at the outset. The
14 debtor creates the uncertainty about whether the debt that the
15 creditor had taken action to collect was discharged by failing to
16 schedule the debt or list the creditor on the creditors' matrix and
17 then failing to bring a timely action under Rule 4007 to clarify the
18 issue, see Fed. R. Bankr. P. 4007. As a result, when the debtor is
19 responsible for the uncertainty about whether the debt has been
20 discharged, requiring the debtor to make an initial showing of the
21 applicability of the discharge order to the debt, and, by extension, a
22 showing of the inapplicability of § 523(a)(3)(B), does not work an
23 injustice.

24 This point is illustrated well by *Ellis v. Dunn (In re Dunn)*, 324
25 B.R. 175 (D. Mass. 2005). In *Dunn*, the debtor hired a law firm to
26 prosecute a workers' compensation claim, and during the pendency of
27 the workers' compensation case, she filed a Chapter 7 bankruptcy case
28 in which she did not list the law firm as a possible creditor. Later,

1 she received her discharge. After the debtor lost her workers'
2 compensation claim, her attorneys commenced an action to collect the
3 expenses the firm had incurred in prosecuting the case. The debtor
4 defeated the attorneys' collection action. Then, she reopened her
5 bankruptcy and brought an adversary proceeding against the law firm
6 for contempt for violation of the discharge injunction. The
7 bankruptcy court granted the debtor's motion for summary judgment on
8 the issue of contempt and awarded her damages of \$10,407.75. On
9 appeal, the district court reversed the bankruptcy court's order
10 granting summary judgment and vacated the sanctions award. *Id.* at
11 181. The district court specifically rejected the argument that
12 knowledge of the discharge amounted to inquiry notice, which imposed
13 upon it the duty to learn the scope of the order. *Id.* at 179-80. The
14 court explained:

15 But if it is not clear whether the debtor's discharge
16 affected a particular debt or a particular creditor, actual
17 knowledge simply of the existence of that order by itself
may not be sufficient to presume a deliberate violation of
the order.

18 The discharge order at issue here did not release [the
19 debtor] from all debts; it released her from all
20 dischargeable debts. Some reference to the possible
exceptions to discharge under 11 U.S.C. § 523 was therefore
21 . . . necessary to understand the actual scope of the
injunction.

22 *Id.* at 180 (emphases in original).

23 In *Dunn*, the district court specifically faulted the bankruptcy
24 court for shifting the burden of proof on the applicability of
25 § 523(a)(3)(B). The district court stated that "[i]n effect, the
26 bankruptcy judge employed a presumption that shifted to the appellants
27 the burden of proving they were not in contempt. This was an error."
28 *Id.* at 181.

1 Azevedo's bankruptcy case was a no-asset, no-bar-date Chapter 7.
2 Accordingly, other than debts for fiduciary or non-fiduciary fraud,
3 false financial statements, or willful and malicious injury, Azevedo's
4 debts have been discharged--even though unscheduled. See 11 U.S.C. §
5 523(a)(3)(A); *White v. Nielsen (In re Nielsen)*, 383 F.3d 922, 926 (9th
6 Cir. 2004); *Beezley v. Cal. Land Title Co. (In re Beezley)*, 994 F.2d
7 1433, 1434-41 (9th Cir. 1993) (per curiam). By contrast, if Azevedo
8 had any unscheduled debts for fiduciary or non-fiduciary fraud, false
9 financial statements, or willful and malicious injury, such debts may
10 not have been discharged if § 523(a)(3)(B) applies. *Id.*

11 The judgment debt owed to CVD was unscheduled. The question of
12 whether this debt is nondischargeable by operation of § 523(a)(3)(B)
13 has never been adjudicated. The only evidence provided that addresses
14 this question was that the underlying action was based on mutual
15 claims for breach of contract. This evidence is not clear and
16 convincing evidence that the discharge order applied to the judgment
17 debt. That the parties pursued only contract claims in the underlying
18 action does not preclude a later adversary proceeding under §
19 523(a)(2), (4), or (6). See *Brown v. Felsen*, 442 U.S. 127, 138-39
20 (1979); *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 873 (9th Cir.
21 2005). Thus, Azevedo has not shown a violation of the discharge
22 order, which is a prima facie element of his case.

23 **III. Knowledge that Discharge Injunction Was Applicable to the**
24 **Judgment Debt**

25 A party seeking contempt must prove that the creditor knew the
26 discharge injunction was applicable. *Bennett*, 298 F.3d at 1069. This
27 requires that the creditor actually knew that the discharge was
28 applicable to its claim. *ZiLOG*, 450 F.3d at 1007-10 & n.14; *Dunn*, 324

1 B.R. at 178-79.

2 **A. Knowledge of Azevedo's Identity**

3 The parties do not dispute that CVD had neither notice nor
4 knowledge of the bankruptcy prior to January 28, 2013, when Taylor
5 called attorney Peter Dean. The issue is whether Azevedo has shown by
6 clear and convincing evidence that CVD, after this phone call on
7 January 28, 2013, actually knew that the judgment debtor it knew by
8 the alias "Joe Azevedo" was the same person as Azevedo, who had filed
9 bankruptcy and received a discharge.

10 Azevedo offers several arguments to show CVD's knowledge of
11 Azevedo's identity. First, he posits that such knowledge may be found
12 based on the similarity between Azevedo's name and the name of
13 Azevedo's alias, "Joe Azevedo." But this name similarity is not
14 sufficient to show knowledge under the clear and convincing standard.
15 Furthermore, Azevedo did not include on the petition either a middle
16 name or initial, and "Azevedo," "Jose," and "Joe," are all frequently
17 appearing names. Any weight the evidence of name similarity may have
18 is also diminished by Azevedo's failure to include his trade name on
19 the petition, list CVD as a creditor, or schedule the judgment debt
20 owed to CVD.

21 Moreover, evidence that CVD should have known its judgment debtor
22 was the same person as Azevedo based on the similarity of their names
23 fails to satisfy the requisite standard to show that CVD actually knew
24 they were the same person. Coupled with Azevedo's failure to list CVD
25 at the outset and GLO's refusal to confirm Azevedo's identity until
26 May 30, 2013, the court does not find that Azevedo has sustained his
27 burden as to CVD's knowledge of his identity.

28 Second, Azevedo argues that CVD knew of his identity from the

1 fact that the Social Security number for Azevedo and CVD's judgment
2 debtor were identical. The problem is that CVD did not know any
3 digits of its judgment debtor's Social Security number and knew only
4 the last four digits of Azevedo's Social Security number. CVD's
5 abstract of judgment against does not list a Social Security number,
6 and Azevedo's petition has only the last four digits of this number.

7 Third, Azevedo argues that CVD should have known that he was the
8 same person as Joe Azevedo given the inclusion of the Livingston
9 street address on the petition, which was the same address appearing
10 on CVD's abstract of judgment. Similarly, he argues that CVD had such
11 knowledge because of Azevedo's inclusion of the trade name "Azevedo &
12 Silva Dairy" in his Statement of Financial Affairs. Certainly, these
13 facts are circumstantial evidence of CVD's knowledge of Azevedo's
14 identity. But Dean denied drawing the inference necessary to know
15 Azevedo's identity despite reviewing Azevedo's petition and schedules.
16 As applied to these facts, *ZiLOG* requires Azevedo as the moving party
17 to show by clear and convincing evidence that CVD actually knew that
18 Azevedo and CVD's judgment debtor were the same person. While it may
19 be likely that CVD understood Azevedo's identity, the court finds that
20 the debtor has not shown this fact by clear and convincing evidence.

21 **B. Knowledge of the Dischargeability of the Judgment Debt**

22 Aside from the question of whether § 523(a)(3)(B) excepted CVD's
23 debt from discharge, Azevedo must prove by clear and convincing
24 evidence CVD actually knew that the judgment debt Azevedo owed was
25 discharged. *ZiLOG*, 450 F.3d at 1007-10 & n.14; *Dunn*, 324 B.R. at 178-
26 79 (rejecting a standard of inquiry notice to infer knowledge of the
27 scope of the discharge).

28 *Nash v. Clark County District Attorney's Office (In re Nash)*, 464

1 B.R. 874 (B.A.P. 9th Cir. 2012) is instructive. Nash was a gambler
2 who often visited the Hard Rock Café and Casino in Las Vegas. He
3 established a "marker account," a gambler's line of credit with a
4 casino. His funds were insufficient to cover an obligation to the
5 casino of \$12,500 in markers. The Clark County, Nevada, District
6 Attorney's Office arranged a payment plan to resolve the matter. Nash
7 defaulted under this payment plan, and the district attorney issued a
8 warrant for his arrest. Next, Nash filed a Chapter 7 bankruptcy, and
9 received his discharge in the case. He had scheduled the debt to the
10 casino as undisputed. Following his discharge, Nash was arrested.
11 His attorney reopened his bankruptcy case. The district attorney
12 offered to defer criminal prosecution to allow Nash to work out the
13 problem with the casino. After discussion between Nash and the
14 casino, Nash entered into a settlement with the district attorney that
15 provided for payoff of the debt over time. Nash then brought an
16 adversary proceeding against the casino and the district attorney,
17 requesting sanctions against them for their violation of the discharge
18 injunction. The bankruptcy court found that Nash's gambling debt had
19 been discharged but denied the requested sanctions against the casino
20 and the district attorney. *Id.* at 878. On appeal, the Bankruptcy
21 Appellate Panel for the Ninth Circuit affirmed. *Id.* at 885. The
22 panel held that the bankruptcy court did not abuse its discretion in
23 declining to award sanctions against the casino and the district
24 attorney. *Id.* at 880-85. The panel discussed the knowledge
25 requirement stated in *Bennett*, 298 F.3d at 1069, explaining that the
26 creditor that is the subject of the contempt proceeding must
27 subjectively understand that the debt was discharged:

28 The Ninth Circuit has held that the first prong

1 of the [Bennett] test requires that the bankruptcy
2 court be shown that the target creditor knew that the
3 discharge injunction was applicable to its claim. But
4 . . . the evidence in this case shows that neither
5 Hard Rock nor the [district attorney] acknowledged
6 that the discharge injunction in Nash's bankruptcy
7 case was applicable to collection of marker account
8 debt. As they explained to Nash's attorney, it was
9 instead their view that, because the matter was a
10 criminal proceeding, it was not impacted by the
11 discharge.

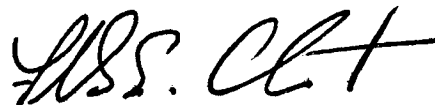
12 Nash, 464 B.R. at 880 (citation omitted).

13 In this case, Azevedo has offered insufficient evidence that CVD
14 and Dean actually knew that the discharge order applied to the
15 judgment debt Azevedo owed to CVD. Camp said that he knew of the
16 Beezley no-asset, no-bar-date rule. But the court treats this
17 statement as indicating knowledge only of § 523(a)(3)(A), not §
18 523(a)(3)(B). Thus, Azevedo has not made a clear and convincing
19 showing that the respondents knew that § 523(a)(3)(B) was inapplicable
20 to the judgment debt, bringing it within the scope of Azevedo's
21 discharge.

22 CONCLUSION

23 For each of these reasons the court finds that Azevedo has not
24 sustained his burden of proof, and his request for contempt sanctions
25 against CVD and Peter Dean will be denied. The court will issue a
26 separate order.

27 Dated: March 4, 2014



28 Fredrick E. Clement
United States Bankruptcy Judge

Instructions to Clerk of Court

Service List

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below.

The Clerk of Court will send the Order via the BNC or, if checked X , via the U.S. mail.

Persons Specified Below:

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